

Letter of Findings: 01-20130273
Individual Income Tax
For the Years 2009-2011

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ISSUE

I. Income Tax – Imposition.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-5-4; IC § 6-3-2-1; IC § 6-3-1-3.5; [45 IAC 3.1-1-2](#); [45 IAC 3.1-1-7](#); [45 IAC 3.1-1-66](#); I.R.C. § 1366.

Taxpayer protests the assessment of additional income tax.

STATEMENT OF FACTS

Taxpayer is an individual who is one of the shareholders of an Indiana S corporation. The S corporation owns a gas station and convenience store located in Indiana. The Indiana Department of Revenue ("Department") performed sales and income tax audits of the S corporation for the 2009, 2010, and 2011 tax years. As a shareholder of the S corporation, those income tax assessments flow through to Taxpayer. The Department reviewed the S corporation's business records. The Department determined that the S corporation's records were inadequate. Taxpayer did not have daily cash register Z-tapes, original sales records, expense reports, and monthly sales recaps.

As a result of the Department's audit, the Department issued proposed assessments of additional sales tax based on the "best information available." The Department determined that Taxpayer had not collected and/or reported the proper amount of sales tax on its sales of diesel fuel, gasoline, and convenience store items. Pursuant to IC § 6-8.1-5-1 and [45 IAC 2.2-6-8](#), sales tax was assessed on these additional taxable sales. The S corporation protested the sales tax assessment. For further information relating to the sales tax assessment, please refer to Letter of Findings 04-20130028 in which the S Corporation was denied in part and sustained in part subject to the results of a supplemental audit.

The Department also made adjustments to the S corporation's adjusted gross income based upon the additional taxable sales adjustments. Since these income tax assessments flow through to Taxpayer as a shareholder in the S corporation, the Department issued proposed assessments to Taxpayer for the additional adjusted gross income tax on his share of the S corporation income, as well as penalty and interest. Taxpayer protested the income tax assessment pending resolution of the related sales tax investigation (See Letter of Findings 04-20130028). This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Income Tax – Imposition.

DISCUSSION

Indiana imposes an adjusted gross income tax on all residents. IC § 6-3-2-1. A taxpayer's Indiana income is determined by starting with the federal income and making certain adjustments. IC § 6-3-1-3.5. Income from an S corporation flows through to the individual shareholders' personal income and is reported by the shareholders on their personal income tax returns. See I.R.C. § 1366. See also [45 IAC 3.1-1-66](#); [45 IAC 3.1-1-2\(14\)](#); [45 IAC 3.1-1-7\(6\)](#).

If the Department reasonably believes that a person has not reported the proper amount of tax due, the Department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the Department. IC § 6-8.1-5-1(a). Every person subject to a listed tax must keep books and records so that the Department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. IC § 6-8.1-5-4 (a). A person must allow inspection of the books and records and returns by the Department or its authorized agents at all reasonable times. IC § 6-8.1-5-4 (c). The notice of proposed assessment is prima facie evidence that the Department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is incorrect rests with the person against whom the proposed assessment is made. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Taxpayer was assessed additional income tax based upon the adjustments made to the S corporation's adjusted gross income from the "additional taxable sales" determination made in the S corporation's sales and use tax audit. The S corporation protested the sales tax assessment. Please refer to Letter of Findings 04-20130028 for further information relating to the S corporation's sales tax protest. Since the S corporation's protest was denied in part and sustained in part subject to the results of a supplemental audit, the amount of "additional taxable sales" may be adjusted by the results of the supplemental audit. If the "additional taxable sales" in the S corporation's sales tax audit are adjusted by the results of the supplemental audit, then the "additional taxable sales" in the S corporation's income tax audit should also be adjusted.

Accordingly, Taxpayer's protest of the imposition of additional individual income tax—based upon the S corporation's additional income from the "additional taxable sales" determined in the audit—is also sustained subject to the results of the of the S corporation's sales tax supplemental audit. Therefore, Taxpayer's protest is sustained to the extent that the supplemental audit of the additional documentation results in the audit division making an adjustment to the "additional taxable sales." However, Taxpayer's protest is denied to the extent that the supplemental audit of the additional documentation does not result in the audit division making an adjustment to the "additional taxable sales."

FINDING

Taxpayer's protest is denied in part and sustained in part subject to the results of a supplemental audit.

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